EXXON CORP.

IBLA 79-503 Decided February 4, 1980
80-154

Appeal from decisions of the Eastern States Office, Bureau of Land Management, rejecting hardrock prospecting permits ES 17193, ES 17194, ES 17195, ES 17197, ES 20167.

Affirmed.

1. Mineral Lands: Prospecting Permits -- Mineral Leasing Act for Acquired Lands: Lands Subject To -- Public Lands: Leases and Permits

A hardrock prospecting permit application is properly rejected where the deed conveying the subject lands to the United States expressly excepts therefrom all minerals and rights thereunder outstanding of record in third parties.

APPEARANCES: W. S. Livingston, Esq., Eino Zapata, Esq., Exxon Company, U.S.A., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Exxon Corporation appeals from two decisions of the Chief, Division of Lands and Minerals, Bureau of Land Management (BLM), dated May 23, 1979, and November 2, 1979, rejecting hardrock prospecting permit applications ES 20167, ES 17193, ES 17194, ES 17195, and ES 17197. By letter of December 7, 1979, Exxon withdrew its appeal as to ES 17193, ES 17194, and ES 17197. We have consolidated sua sponte ES 20167 and ES 17195 because of the similarity of the facts and legal issues involved.

On April 25, 1977, and thereafter on November 27, 1978, appellant filed the above applications to prospect in certain lands located in the Nicolet National Forest and administered by the United States

Forest Service. 1/ The decisions by the Chief, Division of Lands and Minerals, BLM, rejected the above applications, because the mineral rights sought by appellant had been excepted from the conveyances of the subject lands to the United States.

In its statement of reasons on appeal, appellant asserts that the United States does in fact own the minerals described in its prospecting permit applications. No factual support is given for this statement, but appellant does call to our attention section 893.15 of the Wisconsin statutes. That section states:

> [N]o action affecting the possession or title of any real estate shall be commenced by any person * * * after January 1, 1943, which is founded upon any unrecorded instrument executed more than 30 years prior to the date of commencement of such action, or upon any instrument recorded more than 30 years prior to the date of commencement of the action, or upon any transaction or event occurring more than 30 years prior to the date of commencement of the action, unless within 30 years after the execution of such unrecorded instrument, or within 30 years after the date of such transaction or event there is recorded in the office of the registry of deeds of the county in which the real estate is located, some instrument expressly referring to the existence of such claim, or a notice setting forth the name of the claimant, a description of the real estate affected and of the instrument or transaction or event on which such claim is founded * * *.

Appellant certifies that the county deed records contain no reference to any mineral reservation in the subject lands in any instrument recorded within 30 years from the date of its search. Hence appellant seems to argue that the United States can issue a prospecting permit for the subject lands, because any private owner of the mineral estate would be barred by the above-quoted Wisconsin statute of limitations from asserting a property interest therein.

1/ In prospecting permit application ES 20167, appellant sought to prospect in the SW 1/4 NW 1/4, SW 1/4 SW 1/4 sec. 18, T. 40 N., R. 16 E., fourth principal meridian, Florence County, Wisconsin. The BLM decision of May 23 1979, rejected this application in toto. Prospecting permit application ES 17195 involved lands in the S 1/2 NE 1/4, E 1/2 SW 1/4, SE 1/4 sec. 25, and in the NE 1/4, E 1/2 NW 1/4 sec. 36, T. 40 N., R. 15 E., Florence County, Wisconsin. Also included were lands in the SW 1/4 NW 1/4, W 1/2 SW 1/4 sec. 30, and in the W 1/2 NW 1/4 sec. 31, T. 40 N., R. 16 E., Florence County, Wisconsin. This application was rejected as to the S 1/2 NE 1/4, SE 1/4 sec. 25, T. 40 N., R. 15 E., and as to the W 1/2 NW 1/4 sec. 31, T. 40 N., R. 16 E., Florence County, Wisconsin.

[1] A deed conveying the lands described in application ES 20167 to the United States was executed on January 17, 1936, by Victor and Bernadette Thelen of Grand Rapids, Michigan. 2/ Expressly excepted, however, from the operation of this conveyance were "all minerals and rights thereunder, as now outstanding of record in third parties, in, upon or under the lands hereby conveyed." Although it remains unclear who the third parties might be, it is clear that the United States never received the mineral estate in the subject lands. Under such circumstances, it would be contrary to the policy of this Department to issue a prospecting permit.

A similar conclusion follows with respect to those lands in application ES 17195 rejected by BLM for prospecting. Those lands are:
T. 40 N., R. 15 E., Florence County, Wisconsin Sec. 25: S 1/2 NE 1/4, SE 1/4. T. 40 N., R. 16 E., Florence County, Wisconsin Sec. 31: W 1/2 NW 1/4.

By a deed of April 12, 1935, the Menominee Bay Shore Lumber Company conveyed to the United States the east half of sec. 25, T. 40 N., R. 15 E. By a deed of June 3, 1935, A. J. and Mildred S. Tipler conveyed to the United States the entire northwest quarter of sec. 31, T. 40 N., R. 16 E. In each case, all minerals and rights thereunder outstanding of record in third parties were expressly excepted from the conveyance in language virtually identical to that in ES 20167.

By regulation, an application for a permit or lease which is filed for lands not available for prospecting or leasing must be rejected. 43 CFR 3501.1-6. This policy is reflected in several cases and generally receives only brief discussion because of its well-established nature. Leroy Pedersen, 31 IBLA 124 (1977); Lloyd K. Johnson, M 11465 (Oct. 12, 1970). See also Jean Oakason, 22 IBLA 311 (1975); Jean Oakason, 22 IBLA 33 (1975); Shell Oil Co., 20 IBLA 292 (1975) and cases cited therein. To grant the subject permits is to require the owner of the mineral estate to defend his interest by a lawsuit or other means. Appellant's argument invoking the Wisconsin statute of limitations, while intriguing, invites litigation and calls for a reversal of longstanding Departmental policy. This we decline to do.

2/ In a decree styled United States of America vs 1,349.56 adres [sic] of land in Florence County, Wisconsin, Cleereman & Jauquet Lumber Co., et al., the SWSW sec. 18, T. 40 N., R. 16 E., fourth principal meridian, was vested in fee simple in the United States "[s]ubject to the exception of mineral rights outstanding of record in third parties." No. 5038 Civil Docket, dated April 17, 1939, and recorded April 21, 1939, Florence County, Wis. Reg., Liber 41 Misc. page 575.

Appellant requests an opportunity for oral argument, because the issues involved in this case are of "major importance, both to the Bureau of Land Management and to the mineral extractive industries." No factual issues appear in the record which would necessitate a hearing below. A request for a hearing will be denied when the facts are not in dispute and the determination rests on questions of law. Estate of Charles D. Ashley, 37 IBLA 367, 85 I.D. 403 (1978). The legal issues in the present appeal have been fully explored in two briefs submitted by appellant. Appellant's request for oral argument is therefore denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Newton Frishberg
Chief Administrative Judge